HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.220 of 2007

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Between:

Smt. Tondepu Lakshmi …Appellant

And

Government of Andhra Pradesh,
represented by its Secretary,
Panchayat Raj Department,
Secretariat, Hyderabad and others. ….Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri Palle Nageswara Rao

Counsel for respondent Nos.1 to 4 : Government Pleader for Panchayat Raj

Counsel for respondent No.5 : Government Pleader for Industries & Commerce.

10th April, 2007

Per G.S. SINGHVI, C.J.

Feeling aggrieved by the order of the learned Single Judge, who dismissed the writ petition filed for issue a direction to the respondents to allow her to quarry sand in Chityala Reach, Munneru River, Krishna District, the appellant has preferred this appeal.

The appellant's husband, Sri Tondapu Srinivasa Rao participated in the auction conducted by the competent authority on 30-3-2000 for grant of lease for sand quarrying in Chityala Reach. He gave the highest bid of Rs.3,33,036/-. The competent authority accepted the bid and executed lease in favour of Sri Tondapu Srinivasa Rao. However, on account of some or other reasons, he could not carry on the quarrying operations. Sri Tondapu Srinivasa Rao died on 16-6-2003. After three years and five months, the appellant made an application dated 23-11-2006 for being allowed to quarry the sand. The same was rejected by District Panchayat Officer, Krishna District at Machilipatnam (respondent No.3) vide proceedings bearing Rc.No.2669/2000/8, dated 22-12-2006 on the ground that Chityala Reach had been de-notified. The appellant then filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the respondents to allow her to undertake quarrying operations.

The learned Single Judge noted that the representation made by the petitioner had been rejected by respondent No.3 vide proceedings dated 22-12-2006 and held that a direction cannot be issued for allowing her to undertake quarrying operations because Chityala Reach had been de-notified.

We have heard Sri Palle Nageswara Rao, learned counsel for the appellant and the learned Government Pleaders for Panchayat Raj

and Commerce and Industries and perused the record including the file produced by the learned Government Pleader for Panchayat Raj. Some important facts, which emerge from the department's file, are as under:

i) The auction conducted by the competent authority in March, 2000 became subject matter of challenge in Writ Petition No.11432 of 2000 – **Y.V.S. Reddy and five others v. The District Collector, Krishna at Machilipatnam and three others.** In WPMP.No.14530 of 2000 filed by the petitioners of that case, the learned Single Judge passed an interim order dated 29-6-2000, whereby he directed that the lessee shall not transport the sand from the sand reach of Munneru River within the limits of Chityala Gram Panchayat through patta lands in Survey No.174/1B. On notice, the appellant's husband, who was impleaded as respondent No.4 in the writ petition, filed WVMP.No.1583 of 2000. After hearing the parties, the learned Single Judge, vide his order dated 10-7-2000 disposed of the writ petition by directing that representation dated 19-6-2000 made by petitioner No.1 be sent to the District Collector, who should treat the same as an appeal under Rule 27 of the Andhra Pradesh Panchayat Raj (Auction of Sand in Water Courses Vesting in Gram Panchayats) Rules, 2000 and decide the same within a period of four weeks.

ii) After disposal of Writ Petition No.11432 of 2000, Sri Tondapu Srinivasa Rao filed C.M.A.No.2783 of 2000 for issue of a direction to the District Collector to consider his application for extension

of lease. The same was allowed by the Court and the concerned authority was directed to consider his application. However, as the officer concerned did not pass any order, Sri Tondapu Srinivasa Rao filed Contempt Case No.1697 of 2000. During the pendency of the contempt case, respondent No.3 issued proceedings dated 12-1-2001, vide which he informed Sri Tondapu Srinivasa Rao that action is being taken for refund of the bid amount.

iii) In the meanwhile, Sri Tondapu Srinivasa Rao filed Writ Petition No.4654 of 2001 for issue of a direction to respondent Nos.4 and 5 not to interfere with quarrying of sand in Chityala Reach. The same was disposed of by the learned Single Judge vide his order dated 19-4-2001 and respondent No.3 herein was directed to take steps to enable the writ petitioner to undertake quarrying operations in terms of lease dated 8-3-2001.

iv) One Jala Ramulu of Chityala Gram Panchayat filed Writ Petition No.4458 of 2001 for restraining the District Level Committee and District Collector, Krishna from issuing temporary permit for sand quarrying at Chityala Village. He also filed WPMP.No.No.5712 of 2001 for an interim order. The same was disposed of by the learned Single Judge on 14-3-2001 and the official respondents were directed not to issue any temporary permit for sand quarrying in Chityala Village.

v) Sri Tondapu Srinivasa Rao filed another petition, which was registered as Writ Petition No.10968 of 2001, for issue of a direction to the respondents to renew the

lease. The same was disposed of by the learned Single Judge on 8-6-2001 by directing the State Government to consider and decide his representation within two months.

vi) By an order dated 4-8-2001, Collector (Panchayat Wing), Krishna, Machilipatnam de-notified the sand reach of Chityala Village. That order reads as under:

"Whereas, the Mandal Revenue Officer, Vatsavai in his letter 1st cited has stated that the sand reach of Chityala Village in Vatsavai Mandal of Krishna District extends in R.S.No.139 and R.S.No.174/5 covering an area of Ac.27.03 cts. and Ac.14.10 cts. respectively and the area covered in R.S.No.139 was excavated long back. As such, the site is not useful for lifting the sand. The site in R.S.No.174/5 where there are sand deposits is covered by R.W.S. Pilot Scheme from which the drinking water is supplied to the people in 42 villages. Further, the above sites are nearer to Railway track and a Railway bridge. The filter beds are also nearer to the above two sites. The reach is surrounded by the patta lands of private individuals who are cultivating them;

Whereas the Mandal Revenue Officer, Vatsavai has stated in his report that the reach has no clear way for the transportation of sand, that there is likelihood of damage to the R.W.S. Pilot Scheme, filter beds, Railway track and the bridge if the sand under the reach is lifted and stated that the sand reach might not be continued;

Whereas, the Assistant Hydrologist, Ground Water Department and the Royalty Inspector, Mines & Geology, Vijayawada who have made the joint inspection of the spot have stated in their joint inspection report that it is not desirable to allow the quarrying of sand within the radious of 500 meters from the Pilot Scheme;

Further, the villagers, having the patta lands surrounding the reach have been approaching the Honourable Court for every time whenever the auction has been proposed on some pretext or other plea and the Honourable Courts have been

pleasing to accord stay orders due to which the auction could not be conducted;

Whereas, the villagers are agitating against the allowing of lease holders for the transportation of sand with the fear that the patta lands would be damaged for cultivation and created law and order problem in the matter.

In view of the above circumstances, the sand reach of Chityala Village in Vatsavai Mandal of Krishna Distraict covering the area of the sites in R.S.No.139 and 174/5 is hereby de-notified."

Sri Palle Nageswara Rao argued that refusal of the respondents to renew the lease granted in favour of the appellant's husband is liable to be quashed on the ground of non-application of mind and arbitrary exercise of power because the authority concerned overlooked the fact that he was illegally prevented from quarrying the sand. He further argued that order dated 4-8-2001 passed by Collector (Panchayat Wing), Krishna is liable to be quashed because before de-notifying Chityala Reach, the officer concerned did not give notice and opportunity of hearing to the appellant's husband.

Learned Government Pleader for Panchayat Raj supported the order under challenge and argued that the appellant is not entitled to any relief because she has not questioned the legality of order dated 4-8-2001 by which District Collector, Krishna de-notified Chityala Reach and proceedings dated 22-12-2006 vide which respondent No.3 rejected her application.

We have considered the respective submissions. In our opinion, the appeal is liable to be dismissed because in the writ petition filed by her, the appellant did not challenge order dated 4-8-2001 vide which the District Collector de-notified Chityala Sand Reach and proceedings dated 22-12-2006 vide which respondent No.3

rejected her representation, and without quashing the order of de-notification and proceedings dated 22-12-2006, no relief can be granted to the appellant. We are in complete agreement with the learned Single Judge that in exercise of the power vested in him under the Andhra Pradesh Minor Mineral Concession Rules, 1966, the District Collector is competent to de-notify the sand reach and in the absence of challenge to the order passed by Collector (Panchayat Wing), Krishna, the appellant cannot seek a direction for being allowed to quarry the sand.

We are further of the view that in exercise of the power vested in it under Article 226 of the Constitution, the High Court cannot issue direction, order or writ for compelling the public authorities to act in violation of the statutory provisions.

No other point has been argued.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.409 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

10th April, 2007

C.V.NAGARJUNA REDDY, J.

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